

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

25-MJ-1264

GENDRYAMILCAR NIZ-NIZ,

Defendant.

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**NOTICE OF MOTION AND MOTION**

THE UNITED STATES OF AMERICA, by and through its attorney, Michael DiGiacomo, United States Attorney for the Western District of New York, Andrew J. Henning, Assistant United States Attorney, hereby moves the Court for an extension of the Rule 48(b) dismissal set for May 2, 2025, 2025, for the reasons set forth in the attached affidavit. Counsel for the defendant, John Morrissey, Esq., consents to and joins in the relief sought herein.

DATED: Buffalo, New York, April 21, 2025.

MICHAEL DIGACOMO  
United States Attorney

BY: */s/ ANDREW J. HENNING*  
ANDREW J. HENNING  
Assistant United States Attorney  
United States Attorney's Office  
Western District of New York  
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Buffalo, New York 14202  
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**AFFIDAVIT**

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS:  
CITY OF BUFFALO )

**Andrew J. Henning**, being duly sworn, deposes and states:

1. I am an Assistant United States Attorney for the Western District of New York and assigned to my office's file regarding this action. This affidavit is submitted in support of the government's motion for an extension of the Rule 48(b) dismissal set for May 2, 2025.

2. On March 21, 2025, a criminal complaint was authorized by the Court charging the defendant with knowingly and willfully make a materially false, fictitious, or fraudulent statement to an agent of the United States Border Patrol, in a matter within the executive branch of the United States Government, in violation of Title 18, United States Code, Section 1001(a)(2).

3. On March 24, 2025, the defendant appeared before the Court for an initial appearance. At that time, the defendant waived a preliminary hearing and was detained thereafter. In addition, the Court set a Federal Rules of Criminal Procedure Rule 48(b) dismissal date for May 2, 2025. Based on representations made by the parties regarding the likely pre-indictment resolution of this matter, the Court adjourned the FRCP, Rule 48(b) date until May 2, 2025.

4. Since that date, the government has provided defense counsel with a formal plea offer to resolve this matter. Once defense counsel is able to discuss the plea in detail with the defendant, the parties expect to schedule this matter for an expedited plea and sentencing before the assigned United States District Court Judge, The Honorable John L. Sinatra.

5. The parties are requesting that the Rule 48(b) date be extended to June 2, 2025, to allow for the defendant to enter a plea and sentencing before United States District Court Judge Sinatra. Defense joins in both the request for the adjournment and exclusion of time pursuant to the Speedy Trial Act.

6. Since the parties have agreed to the terms of a pre-indictment resolution of this matter and expect to have the matter scheduled for an expedited plea and sentencing in the near future, speedy trial time in this matter should be excluded to afford the parties a reasonable opportunity to schedule this matter for a plea before this Court or before Judge Sinatra. The public's interest in conserving resources by avoiding the unnecessary use of the

grand jury, the time and expense of both a trial and a likely appeal, combined with the certainty of conviction that will be obtained through a plea of guilty by the defendant, outweigh the public's interests in a speedy trial. Furthermore, the defendant's interest in obtaining the benefit of a lesser sentence which will likely accompany the pretrial disposition of this matter outweigh the interests of the defendant in a speedy trial. Based on the foregoing representations, the exclusion of time in this matter is in the interest of justice and not contrary to the interests of the public and the defendant in a speedy trial pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (h)(7)(B)(iv).

WHEREFORE, it is respectfully requested that the Rule 48(b) dismissal date be set for June 2, 2025, and that the time from and including May 2, 2025 to and including June 2, 2025, be excluded from the Speedy Trial Act.

*/s/ ANDREW J. HENNING*  
ANDREW J. HENNING  
Assistant United States Attorney  
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Buffalo, New York 14202  
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Andrew.Henning@usdoj.gov

Subscribed and sworn to before me  
on this 21<sup>st</sup> day of April 2025.

s/CHELSEA SCARSELLA  
Commissioner of Deeds  
In and for the City of Buffalo, New York  
My Commission Expires Dec 31, 2026